

GOVERNMENT OF ANDHRA PRADESH

ABSTRACT

I&CAD Department – Work Charged Establishment – Condonation of the break in service about (20) months as on the cut off date i.e. 25.11.93 in respect of Sri T. Satyanarayana, Mazdoor and (7) other applicants in O.A. No.3056/2004, working under the control of Superintending Engineer, Irrigation Circle, Eluru for regularization of their services in terms of G.O.Ms.No.212, Finance & Planning (FW.PC.III) Department, dated 22.04.94 – Orders Issued.

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IRRIGATION & COMMAND AREA DEVELOPMENT (Ser.V) DEPARTMENT

G.O.Ms.No. 77,

Dated: 21-07-2010

Read the following:

- 1) From the Hon'ble A.P.A.T., Hyderabad order dated 01.05.2009 in O.A. No.3056/04 with V.M.A. No.469/2004.
- 2) Govt. Memo No.26573/Ser.V(1)/2004-4, dated 03-07-09.
- 3) From the Engineer-in-Chief (I), Drainage Wing, Hyderabad Letter No.CE/DR/5316/99, dated 08.01.2010.
- 4) Govt. Memo No.26573/Ser.V.1/04-05, dated 22.02.2010.
- 5) From the Engineer-in-Chief (I), Drainage Wing, Hyderabad, Letter No.CE/DR/5316/99, dated 18.03.2010.

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ORDER:

The Engineer-in-Chief (I), Drainage Wing, Hyderabad in his letter 3<sup>rd</sup> read above has reported that, Sri G. Gopalakrishna & (12) others were engaged as NMR's during the period from 1982-83 and continued upto 31.05.1988. They were terminated w.e.f. 01.06.1988 with one months advance notice as there is no work load. Retrenchment gratuity as per ID Act has been sanctioned to them. Except (2) NMR's i.e. 1.Sri B. Raja Rao, 2.Sri B. Venkata Rao no other NMR's have taken the gratuity amount. In the meantime, they have filed petitions in the Hon'ble courts challenging their terminations in W.P. No.8447/88, R.P. No's.14918 to 14926/89. The courts have disposed off the cases with a direction to continue them (i) provided there is work & (ii) consider their cases if they are eligible for G.O.Ms.No.143, dated 16.03.1984. Out of the above, (10) NMR's were re-engaged after a gap of 20 Months during 2/90 and continued. In 1991, the services of the above individuals were converted into W.C. Estt. (Mazdoor) duly taking the previous period of NMR service (i.e.) service rendered prior to retrenchment and service from the date of re-engagement by the S.E., I.C., Eluru (19.08.91) and given all benefits that are applicable to work charged establishment as on that date. Subsequently, the Govt. have issued instructions to cancel the irregular regularization made by the filed officers by following the rules and recover the excess amount paid from the individuals by invoking clauses under R.R. Act, if necessary vide Govt. Memo No.1310/Ser.V-1/89-16, dated 02.08.1995. Aggrieved by the Govt. orders, the above individuals i.e. Sri Goplakrishna & (8) others have filed O.A. No.5304/95 and the Hon'ble APAT, Hyderabad, has passed interim direction to the respondents to suspend the above orders until further orders. Subsequently, the Hon'ble APAT while disposing the above O.A. on 06.10.1999 has observed that the respondents cannot refuse to consider the request of the petitioners on the sole ground that they have not completed (5) years of continuous service as on 25.11.1993 and directed to consider their request as per G.O.Ms.No.212, Finance & Planning Department, dated 22.04.1994 in case they fulfill and satisfy the other conditions. As per these directions the individuals were continued in service and all service benefits that are applicable to work charged establishment are being extended to them from time to time. Subsequently, the Government have issued instructions vide Memo No.41619/Ser.V.2/2001-1, dated 23.05.2002 to submit proposals

(P.T.O.)

as per G.O.Ms.No.212, Finance & Planning Department, dated 22.04.1994 if they fulfill the conditions therein otherwise to issue speaking orders. Accordingly, the Engineer-in-Chief (I), Drainage Wing, Hyderabad has issued speaking orders on 19.04.04 to the above (8) Mazdoors to show cause within a period of (30) days as to why they shall not be discharged from service as their re-appointment and conversation as per G.O.Ms.No.143, dated 16.03.84 and G.O.Ms.No.212, dated 22.04.94 is irregular. Aggrieved by this, the applicants (except Sri G. Gopala Krishna, who expired while in service on 05.09.02) have filed O.A. No.3056/04. The Hon'ble APAT had passed interim directions that the respondents shall not take further action in pursuance of the show cause notice No.AB/EC.II/OA/5304-95/285-GI, to 292-GL, dated 19.04.04 to the end of 06/04 and extended them until further orders. Subsequently, the Hon'ble APAT in its final orders dated 01.05.2009 in O.A. No.3056/04 with V.M.A. No.469/2004 while allowing the O.A. has directed the respondents to pass appropriate orders with respect to the regularization of their services, if they fulfill the conditions prescribed in G.O.Ms.No.212, Finance & Planning (FW.PC.III) Department, dated 22.04.94. On these directions, the GP for I&CAD, APAT has informed that, "in fact in R.P. No's.14918/89 to 14926/89 the erstwhile tribunal held that their services deserve to be considered and regularization to be made without delay. Also in O.A. No.5304/95 the Hon'ble APAT directed to pass orders keeping in view the judgment reported in 1999 3 ALD 702 in the case of T. Nagaraju V/s. The Dist. Collector, West Godavari district. These two orders are become final. Further they have completed 5 years of service and continuing in service as on the cut of date 25-11-1993. The facts in the present O.A. are similar to the facts in the case of the Principal Secretary to Government of A.P. and others v/s Muttaiah and in respect of recovery, the same is covered by the judgment of the Hon'ble Supreme Court of India reported in 1995 Supp. (I) SCC 18 and 2006 (2) SLR 375". Therefore, he has opined that it is not a fit case for filing writ petition before the Hon'ble High Court of A. P. and advised to implement the same.

2. The Engineer-in-Chief (I), Drainage Wing, Hyderabad in his further letter 5<sup>th</sup> read above has informed that as per the orders of the Government in the reference 4<sup>th</sup> read above, the concerned Executive Engineer has approached the Additional Advocate General, High Court of A.P., Hyderabad. The Additional Advocate General in his letter dated 14.03.2010 has informed that all these individuals have been working in the Department during the periods from 1984-88 and 1990 to till-date. Thus, they have completed as much as (24) years of service with a gap of (20) months. This gap was occurred because of terminating their services for want of work. However, on the directions issued by the Hon'ble Andhra Pradesh Administrative Tribunal, their services were once again engaged from the year 1990. It appears, for regularizing their services in terms of G.O.Ms.No.212, Finance & Planning Department, dated 22.04.1994, one should complete (5) years of service as on 25.11.1993 and shall continue in service. According to the Department, they have not completed (5) years of service as on the cut off date above referred, thus they are not entitled for regularization. But fact remains they have been rendering service till date over a period of (24) years and at this juncture denying regularization is not justified. In one case, the Hon'ble High Court was of the view that even a person who completes five years subsequent to cut off date is also entitled for regularization. He has finally opined that he had no reason to defer with the view of the Government Pleader and also of the considered view that the orders of the Hon'ble APAT dated 01-05-09 in O.A. No.3056/2004 may be complied with, having utilized the services of the Applicants for a substantial period of their life i.e., more than 24 years.

3. In view of the above circumstances, the Engineer-in-Chief (I), Drainage Wing, Hyderabad has requested the Government to issue necessary instructions in the matter immediately.

(Contd. on P.3...)

4. Government after careful examination of the matter and also taking into consideration the length of service rendered by the applicants till date over a period of (24) years, it has been decided to condone the break in service about (20) months as on the cut off date i.e. 25.11.1993 for regularization of the services of the above (8) applicants covered in O.A. No.3056/2004 as required under G.O.Ms.No.212, Finance & Planning (FW.PC.III) Department, dated 22.04.94 on humanitarian grounds as a special case and not to mention this case as a precedent case in future.

5. The Engineer-in-Chief (I), Drainage Wing, Hyderabad shall send necessary proposals for regularization of their services in terms of G.O.Ms.No.212, Finance (PC.III) Department, dated 22.04.1994, duly furnishing information as per checklist issued vide U.O. Note No.13622/241/A1/PC.III/2006, dated 07.06.2006 along with relevant supportive copies for further examination.

6. This order issues with the concurrence of the Finance (PC.III) Department vide their U.O. No.15866-B/321/A1/PC-III/10, dated 28-06-2010.

(BY ORDER AND IN THE NAME OF THE GOVERNOR OF ANDHRA PRADESH)

S.P. TUCKER  
PRINCIPAL SECRETARY TO GOVERNMENT

To  
The Engineer-in-Chief (I), Drainage Wing, Hyderabad.  
Copy to the P.S. to Principal Secretary to C.M.  
Copy to the P.S. to Hon'ble M (M&MI).  
Copy to the P.S. to Principal Secretary to Govt., I&CAD Department.  
Copy to the Superintending Engineer, Irrigation Circle, Eluru.  
Copy to the Finance (PC.III) Department.  
S.f. / S.c.

//Forwarded By Order//

SECTION OFFICER